Farmington Valley Construction, Inc. *and* Connecticut Laborers' Funds a/w Laborers' International Union of North America, AFL–CIO. Case 34–CA–5477

March 31, 1992

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND DEVANEY AND RAUDABAUGH

9/Funds Upon a charge filed by the ~~Union~~ on November 19, 1991, the General Counsel of the National Labor Relations Board issued a complaint against Farmington Valley Construction, Inc., the Respondent, alleging that it has engaged in unfair labor practices within the meaning of Section 8(a)(1) and (5) and Section 8(d) of the National Labor Relations Act. Although properly served copies of the charge and complaint, the Respondent has failed to file an answer.

On March 6, 1992, the General Counsel filed a Motion for Summary Judgment with the Board. On March 9, 1992, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. The complaint states that unless an answer is filed within 14 days of service, "all the allegations in the complaint shall be considered to be admitted to be true and shall be so found by the Board." Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Regional attorney, by letter dated February 12, 1992, notified the Respondent that unless an answer was received by close of business February 21, 1992, a Motion for Summary Judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a Connecticut corporation with an office and place of business in Burlington, Connecticut, has been engaged as a general contractor in the building and construction industry. During the 12-month period ending December 31, 1991, Respondent performed services valued in excess of $50,000 in States other than the State of Connecticut. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that the Connecticut Laborers' District Council of the Laborers' International Union of North America, AFL–CIO, the Union, is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. *The Unit and the Union's Representative Status*

The following employees of Respondent constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All laborers employed by Respondent; but excluding all other employees, and all guards, professional employees and supervisors as defined in the Act.

About June 4, 1990, Respondent entered into an "Acceptance of Agreements" whereby it accepted and approved the collective-bargaining agreement between the Union and the Labor Relations Division of the Associated General Contractors of Connecticut, Inc. (AGC) effective April 1, 1989, and the collective-bargaining agreement between the Union and Connecticut Construction Industries Association, Inc. (CCIA) effective June 1, 1987, and agreed to be bound to such future agreements unless timely notice was given.

About June 4, 1990, Respondent, an employer engaged in the building and construction industry as described above, granted recognition to the Union as the exclusive representative of the unit and since that date the Union has been recognized as such representative by Respondent without regard to whether the majority status of the Union had ever been established under the provisions of Section 9(a) of the Act. Such recognition has been embodied in successive collective-bargaining agreements, the most recent of which are effective by their terms for the period April 1, 1991, to March 31, 1993.

For the period from June 4, 1990, through March 31, 1993, based on Section 9(a) of the Act, the Union has been the limited exclusive collective-bargaining representative of the unit.

B. *The Unfair Labor Practices*

About June 10, 1991, Respondent unilaterally and without the consent of the Union failed to continue in full force and effect all the terms and conditions of the agreements described above, by failing to make the contractually required contributions to the health and welfare fund, the pension fund, the training fund, the legal services fund, the annuity fund, and the New England Laborers and Employers Education Trust Fund.

The subjects set forth above relate to wages, hours, and other terms and conditions of employment of the unit and are mandatory subjects for the purposes of collective bargaining.

Respondent engaged in the conduct described above without prior notice to the Union and without affording the Union an opportunity to bargain with Respondent with respect to this conduct, and has thereby failed and refused to bargain in good faith with the Union in violation of Section 8(a)(1) and (5) of the Act.

CONCLUSION OF LAW

By failing since on or about June 10, 1991, to make contractually required contributions to the health and welfare fund, the pension fund, the training fund, the legal services fund, the annuity fund, and the New England Laborers and Employers Education Trust Fund, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5) and 8(d) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. We shall order the Respondent to make whole its unit employees by making all benefit fund contributions that have not been paid and that would have been paid but for the Respondent's unlawful discontinuance of payments, including any interest applicable to such delinquent payments as determined in accordance with the criteria set forth in *Merryweather Optical Co.*, 240 NLRB 1213 (1979). In addition, we shall order the Respondent to reimburse unit employees for any expenses ensuing from its failure to make such required payments, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enfd. 661 F.2d 940 (9th Cir. 1981), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

ORDER

The National Labor Relations Board orders that the Respondent, Farmington Valley Construction, Inc., Burlington, Connecticut, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with the Connecticut Laborers' District Council of the Laborers' International Union of North America, AFL–CIO, as the limited exclusive bargaining representative of the employees in the unit set forth below, by unilaterally failing to make contractually required contributions to the health and welfare fund, the pension fund, the training fund, the legal services fund, the annuity fund, and the New England Laborers and Employers Education Trust Fund. The unit is:

> All laborers employed by Respondent; but excluding all other employees, and all guards, professional employees and supervisors as defined in the Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Make whole the unit employees by making delinquent contributions on their behalf to the appropriate fringe benefit funds, and by reimbursing them for any expenses ensuing from the Respondent's unlawful refusal to make such payments, in the manner set forth in the remedy section of this decision.

(b) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, trust fund statements, and all other documents or records necessary to analyze the amount of fringe benefit payments due under the terms of this Order.

(c) Post at its facility in Burlington, Connecticut, copies of the attached notice marked "Appendix."[1] Copies of the notice, on forms provided by the Regional Director for Region 34, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately

[1] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with the Connecticut Laborers' District Council of the Laborers' International Union of North America, AFL–CIO, as the limited exclusive bargaining representative of the employees in the unit set forth below, by unilaterally failing to make contractually required contributions to the health and welfare fund, the pension fund, the training fund, the legal services fund, the annuity fund, and the New England Laborers and Employers Education Trust Fund.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL make whole our unit employees by making delinquent contributions on their behalf to the appropriate fringe benefit funds, and by reimbursing them for any expenses ensuing from our unlawful refusal to make such payments.

All laborers employed by Respondent; but excluding all other employees, and all guards, professional employees and supervisors as defined in the Act.

FARMINGTON VALLEY CONSTRUCTION, INC.